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ORIGINAL FILED

JUL - 8 2008

RICHARD W. WIEKING  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

KEVIN M. THOMPSON,

Plaintiff,

-vs-

NATIONAL RAILROAD PASSENGER  
CORPORATION dba AMTRAK; STEVE  
SHELTON; PAT WILICK; JOE DEELY  
and DOES 1 - 15, inclusive,

Defendants.

Case No.

CV 08

3280

COMPLAINT FOR WRONGFUL  
TERMINATION; EMPLOYMENT  
DISCRIMINATION; RETALIATION,  
HARRASSMENT; BREACH OF  
CONTRACT

MEJ

(JURY TRIAL DEMANDED)

Plaintiff KEVIN M. THOMPSON by and through his attorneys, alleges as follows:

**JURISDICTION AND VENUE**

1. This action arises under 42 U.S.C. §§ 12101, 2000e-2, 45 U.S.C. § 51 and 49 U.S.C. § 20109. Plaintiff invokes jurisdiction over his federal claim pursuant to the provisions of 45 U.S.C. § 56.

1 2. Plaintiff invokes jurisdiction over his state law claims pursuant to the provisions of 28  
2 U.S.C. § 1367. The claims that arise under state law relate to claims within the original  
3 jurisdiction of this Court such that the federal and state claims form part of the same  
4 case and controversy under Article III of the United States Constitution.  
5

6 **PARTIES**

7 3. Plaintiff KEVIN M. THOMPSON, ("Plaintiff") is a United States citizen and an adult  
8 male. While employed by Defendant AMTRAK, Plaintiff resided in Nevada City, California and  
9 worked in Oakland, Sacramento California and Reno, Nevada.  
10

11 4. Defendants named herein are:

12 (a) NATIONAL RAILROAD PASSENGER CORPORATION dba AMTRAK  
13 (hereinafter "AMTRAK") is now and at all times mentioned herein was a private entity,  
14 organized and created by the United States, to provide rail travel for hire for passengers and  
15 freight throughout the United States: and  
16

17 (b) STEVE SHELTON, PAT WILICK, and JOE DEELY are now and at all times  
18 mentioned herein were managers and officials of Defendant AMTRAK with sufficient authority  
19 to bind AMTRAK with regard to employment decisions which adversely affected Plaintiff's  
20 employment and working conditions.  
21

22 5. Plaintiff is ignorant of the true names and capacities of the Defendants sued herein as  
23 Does 1 through 15, inclusive, and therefore sues these Defendants by such fictitious names.  
24 Plaintiff is informed and believes and thereon alleges that each of the fictitiously named  
25 Defendants is responsible in some manner for the occurrences alleged herein, and that Plaintiff's  
26 injuries were proximately caused by their conduct. Plaintiff will amend this Complaint to allege  
27 their true names and capacities when ascertained.  
28

1 6. At all times herein mentioned, each Defendant was an employee and agent of each  
2 remaining Defendant, and acted within the scope of said employment and agency when  
3 committing the acts and omissions described in this Complaint. MR. THOMPSON believes and  
4 alleges that each wrongful act and omission by a Defendant was committed with express or  
5 implied approval of every other Defendant, and that each Defendant ratified and approved all  
6 acts and omissions of the others.  
7

8 **FACTUAL ALLEGATIONS**  
9

10 7. Plaintiff has been employed as a passenger conductor at AMTRAK since July 3, 1990.  
11 He has been employed in many locations throughout the AMTRAK system. During his  
12 employment with AMTRAK, Plaintiff consistently received accolades and positive performance  
13 reviews.  
14

15 8. After and because of reporting gross violations of federal and state laws and  
16 AMTRAK internal policies and procedures, Plaintiff was terminated from employment. The  
17 violations that Plaintiff complained of included, but were not limited to, verbal and physical  
18 harassment engaged in by Pat Willick against Plaintiff because Plaintiff complained that Pat  
19 Willick had granted favorable treatment to another AMTRAK employee because she was having  
20 sex with Pat Willick and because Plaintiff complained that Pat Willick had been verbally abusive  
21 to Plaintiff and threw objects at Plaintiff endangering Plaintiff, passengers and employees on a  
22 train, and that Willick was witnessed in possession of a firearm upon AMTRAK property.  
23

24 9. On February 13, 2008, Pat Willick, an assistant superintendent of AMTRAK with the  
25 concurrence of Steven Shelton, superintendent of AMTRAK terminated Plaintiff for alleged  
26 unavailability for duty.  
27  
28



1 15. Plaintiff incorporates by reference Paragraphs 1 through 14, as if fully set forth  
2 herein.

3 16. During the years of his employment with Defendant AMTRAK and commencing on  
4 or about April 17, 2007, Plaintiff had a reasonable good faith belief that the actions of the  
5 Defendants violated federal and state laws and AMTRAK internal policies and procedures.  
6

7 17. Based upon this belief, in October 2007, Plaintiff complained in writing to his  
8 supervisors regarding Defendants' unlawful actions including harassment (Oct 18, 2007 letter)  
9

10 18. Subsequently, Defendant AMTRAK was aware that Plaintiff engaged in protected  
11 activity, including but not limited to the complaint he filed with AMTRAK's Inspector General's  
12 office.

13 19. As a result of Plaintiff's protected activity, Defendant AMTRAK subjected Plaintiff  
14 to adverse treatment, including but not limited to his termination.  
15

16 20. In violation of the provisions of 49 United States Code §20109, Defendants, their  
17 agents, representatives and employees retaliated against Plaintiff for exercising his statutorily  
18 protected rights.

19 21. In committing the acts and omissions alleged herein, Defendants intentionally, and  
20 without justification, deprived Plaintiff of the rights, privileges and immunities secured to him by  
21 the Constitution and laws of the United States.  
22

23 22. In doing each and all of the acts alleged herein, Defendants acted in conformance  
24 with AMTRAK's official policy, custom and practices of tolerating, encouraging and approving  
25 retaliation.  
26

27 23. In further violation of FEHA, Defendants, their agents, representatives and  
28 employees retaliated against Plaintiff for exercising his statutorily protected rights.



1       **WHEREFORE**, Plaintiff prays for relief as hereinafter set forth.

2                               **SECOND CLAIM FOR RELIEF**

3                   **(WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY)**

4       23. Plaintiff incorporates by reference Paragraphs 1 through 22, as if fully set forth  
5 herein.

6       24. The right to discharge an employee under any contract of employment is  
7 limited by considerations of public policy.

8       25. There exists a fundamental public policy in the state of California and in the United  
9 States as reflected in California Labor Code § 1102.5, subdivision (b), which prohibits employer  
10 retaliation against an employee who reports a reasonably suspected violation of the law. This  
11 statute reflects the broad public policy interest in encouraging workplace whistle blowers, who  
12 may without fear of retaliation, report concerns regarding an employer's illegal conduct. This  
13 public policy extends to employees who are not directly protected by the statute itself because  
14 Labor Code § 1102.5 evinces a strong public interest in encouraging employee reports of illegal  
15 activity in the workplace. An employer may not terminate an employee for disclosing to a  
16 government agency or management the employer's possible illegal conduct without violating  
17 fundamental public policy.  
18  
19  
20

21       26. Plaintiff engaged in activity protected by the fundamental public policy set forth in  
22 Labor Code § 1102.5 when he filed a complaint in response to the gross violations of federal and  
23 state laws and AMTRAK internal policies and procedures alleged herein. Plaintiff is informed  
24 and believes and thereupon alleges that this activity was a motivating factor behind the  
25 retaliation, which subsequently led to his termination.  
26

27       **WHEREFORE**, Plaintiff prays for relief as hereinafter set forth.  
28

**THIRD CLAIM FOR RELIEF**

**(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)**

27. Plaintiff hereby realleges and incorporates by reference Paragraphs 1 through 26, inclusive, as if fully set forth herein.

28. In doing each and all of the acts alleged herein, Defendants engaged in a course of conduct, which was intentional, extreme and outrageous. Defendants retaliated against Plaintiff with wanton and reckless disregard of the harm or injury that might result to Plaintiff, for reporting its unlawful conduct.

29. As the proximate result of the acts above, Plaintiff suffered humiliation, mental anguish, and severe emotional and physical distress.

30. The acts of Defendants alleged above were willful, wanton, malicious, and oppressive, and justify the awarding of exemplary and punitive damages.

**WHEREFORE**, Plaintiff prays for relief as hereinafter set forth.

**FOURTH CLAIM FOR RELIEF**

**(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS)**

31. Plaintiff hereby realleges and incorporates by reference Paragraphs 1 through 30, inclusive, as if fully set forth herein.

32. Defendants had a statutory duty to take affirmative steps to prevent harassment and/or a hostile work environment from occurring, and to take proper remedial steps to end harassment and hostility once it became known to it (See 42 U.S.C. §2000e *et seq.* and California Government Code §12940, *et seq.*).

33. Defendants also had a duty to refrain from discriminating against any employee who has opposed any practices forbidden by Government Code § 12940 and to refrain from aiding,

1 abetting, inciting, compelling, or coercing the doing of any of the acts forbidden by Government  
2 Code § 12940, *et seq.*

3  
4 34. Defendants knew or should have known that their failure to exercise due care in its  
5 response to Plaintiff's complaints of unlawful conduct would cause Plaintiff severe emotional  
6 distress.

7  
8 35. Defendants breached their duty of care to Plaintiff by failing to engage in fair, if any,  
9 investigation of Plaintiff's complaints of gross violations of federal and state laws and  
10 AMTRAK's internal policies and procedures and then by retaliating against Plaintiff for  
11 complaining about the aforementioned activities.

12  
13 36. In doing each and all of the acts alleged herein, Defendant engaged in a course of  
14 conduct, which was grossly negligent, extreme and outrageous. Defendants engaged in said  
15 course of conduct with wanton and reckless disregard of the consequences or harm or injury  
16 that might result to Plaintiff.

17 **FIFTH CLAIM FOR RELIEF**

18 **(VIOLATION OF AMERICANS WITH DISABILITY ACT)**

19 37. Plaintiff incorporates by reference Paragraphs 1 through 36, as if fully set forth  
20 herein.

21 38. On or about December 14, 2007 Plaintiff was unable to work because he was  
22 suffering from serious mental illness.

23  
24 39. Defendant discriminated against Plaintiff due to his disability by using the disability  
25 as a pretext to find cause to fire Plaintiff, including claiming that Plaintiff was absent without  
26 leave from his job, even though Plaintiff had notified Defendants of his disability and the reasons  
27 why he was unable to work. Instead of processing Plaintiff's requests for medical leave as they  
28



1 promised they would, Defendants used Plaintiff's absence from work to aid them in coming up  
2 with pretextual reasons to fire Plaintiff.

3  
4 **SIXTH CLAIM FOR RELIEF**

5 **(VIOLATION OF TITLE VII)**

6 40. Plaintiff incorporates by reference Paragraphs 1 through 39, as if fully set forth  
7 herein.

8 41. Defendants showed extreme favoritism towards Christine Tuohy because of her  
9 sexual relationships with Pat Willick and/or others.

10 42. Because of Plaintiff's complaints of the relationship, Defendants retaliated against  
11 him as described herein.

12 43. In addition, the atmosphere of favoritism toward Tuohy, because of her sexual  
13 relationship with Willick and/or others, altered the conditions of Plaintiff's employment and  
14 created a hostile and abusive working environment.

15 **WHEREFORE**, Plaintiff prays for judgment against Defendant and each of them  
16 as follows:

17 1. Compensatory and special damages, including but not limited to, lost wages and  
18 benefits, and damages for mental and emotional distress, according to proof at trial;

19 2. For back pay and the monetary value of lost fringe benefits;

20 3. For prejudgment interest at the legal rate upon the amount of Plaintiff's monetary  
21 losses; and

22 4. Punitive and exemplary damages in an amount appropriate to punish and make an  
23 example of Defendant AMTRAK, to be determined at the time of trial;

24 5. Such other and further relief as the Court deems just and proper.  
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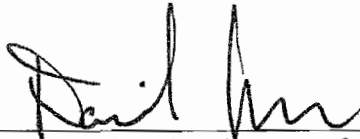
1  
2  
3 Dated: July 8, 2008

4 DANIEL BERKO, Attorney for Plaintiff,  
5 KEVIN M. THOMPSON

6 **JURY TRIAL DEMANDED**

7 Pursuant to Rule 38(b) and all other appropriate rules of the Federal Rules of Civil Procedure,  
8 Plaintiff hereby demands a trial by jury on all issues triable to a jury in each and every cause of  
9 action of his Complaint.  
10

11 Dated: July 8, 2008

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13 DANIEL BERKO, Attorney for Plaintiff,  
14 KEVIN M. THOMPSON  
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